This assumption is rebuttable, but the rebutting evidence must go towards showing absence of knowledge of the gun or absence of power of disposal and control of the gun. The only evidence produced by the accused is a blank denial of knowledge or control and a suggestion that a fourth man, who was said to be in the car on the way *to* Geylang Patah, might have put the gun in the car. In my view, this evidence has not even that slight weight which is all that is required from the defence to discharge the *onus* laid on them by law.

In view of the fact that the other Lewis gun (Ex.D.2) was proved to be unable to discharge a missile, no guilt can attach to their possession of it as it does not fall within the category of arms. As to the ammunition found in the car, there is no proviso in the Explosives Enactment, Johore, of a similar nature to Section 48 of the Arms Enactment, and the presence of the ammunition in the car does not therefore cast the *onus* on the defence to prove non-possession, and as the prosecution have failed to prove either knowledge or power of disposal in regard to it — it was in a closed bag — no guilt in regard to that can attach to any of the accused.

On the charge as a whole therefore I find the accused jointly guilty of possession of arms, to wit one Lewis gun. They must be assumed to have had a joint intention to exercise control over the gun and a joint knowledge of its existence, in that they had a joint possession of the motor car and an intention of using it jointly, and they are therefore severally liable.

I sentence the accused to 7 years R.I. each to date from date of arrest (if not on bail).

Accused Convicted.

NG WAH v. PUBLIC PROSECUTOR.

[Ct. of App. (Willan, C.J. Malayan Union, Murray-Aynsley, C.J. Singapore and Pretheroe, J.) Sept. 17, 1947]
[Ipoh — Criminal Application No. 5 of 1947]

Appeal — Application for leave to appeal out of time — Certificate of the Public Prosecutor under section 45A(i) of the Courts Enactment — F.M.S. Courts Enactment S. 37.

The Applicant was tried by the District Judge for robbery and during the course of trial, to prevent possible intimidation of a witness, the public was excluded from the Court. On this ground **inter alia** the applicant appealed to the High Court which dismissed the appeal and thereupon Counsel for the appellant applied to the Public Prosecutor for a certificate under section 45A (i) of the Courts Enactment to enable the appeal to be heard de **novo** by the Court of Appeal, on the ground that the question of whether the District Judge has power to clear the Court in a criminal trial is a matter of such public interest that it should be decided by the Court of Appeal. The Public Prosecutor, not having the High Court's judgment before him, was unable to certify within 14 days of the decision of the High Court, but subsequently did so.

Held, that as the "failure" in this case was not a failure of applicant, there was no jurisdiction to extend the time and therefore the appeal could not be reheard.

Obiter Dicta. — That the Courts Enactment should be amended to give greater freedom of action to the Public Prosecutor in granting certificates under s. 45A (i) of the Courts Enactment.

COURT OF APPEAL.

S. K. Das for the Applicant.

M. G. Neal (Crown Counsel) for the Respondent.

The Judgment of the Court was given by :—

Willan, C. J. : — This is an application for permission to appeal out of time notwithstanding that the certificate of the Public Prosecutor under section 45A(i) of the Federated Malay States Courts Enactment (Cap. 2) was not filed within the period prescribed by that section.

This application arises out of the conviction of the Applicant by the District Judge at Ipoh for the offence of robbery under section 392 of the Penal Code.

The Applicant appealed against his conviction to the High Court at Ipoh on two grounds. The only one which is relevant to this judgment is that the District Judge at the trial ordered the Court "to be cleared" whilst one prosecution witness gave part of her evidence.

The Appeal was dismissed by the High Court and thereupon Counsel for the Applicant applied to the Public Prosecutor for a certificate under section 45A(i) of the Federated Malay States Courts Enactment to enable the appeal to be heard *de novo* by the Court of Appeal, on the ground that the question of whether the District Judge has power to clear the Court in a criminal trial is a matter of such public interest that it should be decided by this Court.

The Public Prosecutor informed Counsel for the Applicant that he was not disposed to grant such a certificate until he had seen the judgment of the High Court, with the result that it was impossible for him to sign and file his certificate with the Registrar, Supreme Court, as required by section 45A(i) of the Courts Ordinance, within 14 days of the decision of the High Court dismissing the appeal.

The Public Prosecutor after perusing the judgment of the High Court dismissing the Appeal granted his certificate and the Applicant applied to us under section 37 of the Federated Malay States Courts Enacment

for an extension of time to permit the Appeal being heard.

Section 37 of the Federated Malay States Court Enactment is as follows :—

> "The Court of Appeal may in its discretion, on the application of any person desirous of appealing who may be debarred from so doing by reason of his not having observed some formality or some requirement of this Enactment, permit an appeal upon such terms and with such directions as it may consider desirable in order that substantial justice may be done in the matter."

In this matter it is not the Applicant who has failed to observe some formality or requirement of the Courts Enactment, but the Public Prosecutor who has failed to sign and file his certificate as required by section 45A(i) of the Enactment. Accordingly, in view of the specific word "his" in section 37 set out above we are unable to accede to this application.

We add, that we have come to this conclusion reluctantly because we understand that the reason why the District Judge cleared the Court for a short interval at the trial was because one prosecution witness stated that she was afraid to identify the Applicant as a robber on account of her fear of certain Chinese present in Court as part of the public at the trial. With our knowledge that intimidation of this kind is not uncommon in this country at the present time it is a matter for regret that we have been unable to decide this particular question.

It is no fault of the Public Prosecutor that he did not sign and file his certificate within the prescribed period, and we suggest that the Courts Enactment should be amended to give greater freedom of action to him in granting certificates under section 45A(i) of the Courts Enactment.

Application Dismissed.

JOHORE PARA RUBBER COMPANY LTD. v. REGISTRAR OF COMPANIES, MALAYAN UNION.

[Orig. Civil Juris. (Pretheroe, Ag. C.J.) Feb. 27, 1948]
[K.L. — Companies Application No. 12 of 1947]

Companies Ordinance 1940, Sections 80 and 81 — Registration of charge on land under Companies Ordinance — Johore Land Enactment Sections 63 and 65 — Charge on land only comes into existence at the time registration is effected.

In this case the only point at issue was the question of law as to when, for the purposes of sub-section (1) of Section 80 of the Companies Ordinance 1948, a charge on land is created. The charge in this case, a charge on land in Johore, was executed on the 15th of August 1947 and was registered at Johore Bahru on the 9th of September 1947. On the 9th of September 1947 a copy of the charge was sent to the Registrar of Companies for registration under Section 81 of the Companies Ordinance 1940. The Registrar of Companies refused to register the charge claiming that he was precluded from doing so by Section 80 (1) of the Companies Ordinance, 1940, which requires **inter alia** that a charge should be submitted for registration within twenty one days of its creation.

Held, that by the law of the State of Johore which applied to the charge in this case, the charge was created on the day it was registered in the Registry at Johore Bahru, that is, on the 9th of September 1947, and as a copy of the charge was addressed to the Registrar of Companies by post the same day and was received by him within the period of twenty one days, the Registrar of Companies should register the charge, if it provided all the information required by the Ordinance.

COMPANIES APPLICATION.

F. G. Charlesworth for the Plaintiff.

Shields (Crown Counsel) for the Defendant.

Pretheroe, Ag. C. J. : — This is an unusual case in that there is no dispute whatever regarding the facts, and there is only one point of law in issue, viz: when, for the purposes of sub-section (1) of section 80 of the Companies Ordinance, 1940, is a charge on land created?

The facts of the case are as follows. The Johore Para Rubber Company Limited (hereinafter referred to as "the Company") applied to the Industrial Rehabilitation Finance Board for a loan of $15,000 for the purpose of rehabilitating its estates. The Board approved the loan, but before making the advance it required the Company to execute an agreement and also a document referred to by the Board as "a memorandum of charge". This memorandum of charge was executed on behalf of the Company on the 15th August, 1947, and was despatched to the Board that same day. It was returned, together with the agreement duly sealed by the Board, on or about the 15th of September, 1947. The land, which is the subject of the charge, is situate in the State of Johore, so, in compliance with the law of that State, the Company submitted the charge to the Registrar of Titles of that State for registration, and the charge was duly registered at the Registry at Johore Bahru on the 9th September, 1947. On the same day the Company despatched by post a copy of the charge to the Registrar of Companies for registration under section 81 of the Companies Ordinance, 1940. The Registrar was quite willing to enter particulars of the charge in the register but, after taking legal advice on